

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

MASON HAROLD HIRAKAWA,)	CIV. NO. 08-00486 SOM-KSC
)	
Petitioner,)	DEFICIENCY ORDER AND ORDER
)	DENYING APPLICATION TO
vs.)	PROCEED IN FORMA PAUPERIS
T. THOMAS and CLAYTON FRANK,)	
Respondents.)	
)	

**DEFICIENCY ORDER AND ORDER DENYING APPLICATION TO PROCEED IN
FORMA PAUPERIS**

On October 27, 2008, pro se Petitioner Mason Harold Hirakawa filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 ("Petition"), as well as an application to proceed *in forma pauperis*. The Petition, however, was not filed on a court-approved form. The court requires that these forms be used by all prisoners filing petitions for writ of habeas corpus. The Clerk of Court is **DIRECTED** to send Petitioner a blank petition for writ of habeas corpus under 28 U.S.C. § 2254. Petitioner must file his Petition on the court-approved form **on or before November 24, 2008**. Failure to do so will result in **AUTOMATIC DISMISSAL** of this action without prejudice.

In addition, Petitioner's *in forma pauperis* application shows that the present balance of Petitioner's spendable prison account is \$30.14, and he has a current balance of \$218.99 in his restricted prison trust account.

The filing fee for a petition for writ of habeas corpus is \$5.00. See 28 U.S.C. § 1914(a). Petitioner is able to pay the statutory filing fee for this action and is not a pauper within the meaning of 28 U.S.C. § 1915. Accordingly, the application is **DENIED**.

Petitioner is notified that parties filing actions in the United States District Court are required to pay filing fees. 28 U.S.C. § 1914(a). An action may proceed without the immediate payment of a filing fee only upon granting of *in forma pauperis* status. See 28 U.S.C. § 1915. Failure to pay the statutory filing fee will result in dismissal of this action without prejudice. See *Olivares v. Marshall*, 59 F.3d 109, 112 (9th Cir. 1995) (district court has authority to dismiss without prejudice prisoner complaint for failure to pay partial filing fee); *In re Perroton*, 958 F.2d 889 (9th Cir. 1992) (affirming dismissal of appeal of *pro se* litigant for failure to pay required filing fees).

Based on the foregoing, it is **HEREBY ORDERED** that Petitioner's *in forma pauperis* application is **DENIED**. Petitioner is given **up to and including November 24, 2008**, to pay the \$5.00 filing fee. Failure to submit the \$5.00 filing fee on or before November 24, 2008, will result in the **AUTOMATIC DISMISSAL** of this action without prejudice.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, November 3, 2008.



/s/ Susan Oki Mollway

Susan Oki Mollway

United States District Judge

Mason Harold Hirakawa v. T. THOMAS and CLAYTON FRANK; Civ. No. 08-00486 SOM-KSC; DEFICIENCY ORDER AND ORDER DENYING APPLICATION TO PROCEED IN FORMA PAUPERIS